

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

RESHARE COMMERCE, LLC,)	Civil Case No. 0:11-cv-02617-ADM-JJG
)	
Plaintiff,)	Judge Ann D. Montgomery
)	
v.)	
)	
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	
COMPANY, et al.,)	
)	
Defendants.)	
RESHARE COMMERCE, LLC,)	Civil Case No. 0:11-cv-02616-MJD-LIB
)	
Plaintiff,)	Chief Judge Michael J. Davis
)	
v.)	
)	
The ANTIOCH COMPANY d/b/a)	
CREATIVE MEMORIES and)	
subsidiaries and affiliates, et al.,)	
)	
Defendants.)	
RESHARE COMMERCE, LLC, and)	Civil Case No. 0:11-cv-03010-JNE-TNL
FITNESS FORMULARY, LLC)	
)	Judge Joan N. Ericksen
Plaintiffs,)	
v.)	
)	
DOTFIT, LLC,)	
)	
Defendant.)	

**JOINT CLAIM CONSTRUCTION STATEMENT AND
NOTICE REGARDING CLAIM CONSTRUCTION HEARING**

Pursuant to the Court’s Pretrial Scheduling Order (Dkt. #63) and the Court’s Order consolidating claim construction in the above-captioned matters (Dkt. #70), the parties hereby submit their Joint Claim Construction Statement regarding the asserted claims of U.S. Patent No. 6,594,641 (the “’641 patent”). In addition, the parties provide notice of their request that the Court schedule a claim construction hearing to determine claim interpretation.

A. Agreed Upon Claim Terms, Phrases, or Clauses

The parties have not agreed on constructions of any specific terms in the ’641 patent, but have agreed that many of the patent’s terms can be applied according to their ordinary meaning and do not require construction by the Court.

B. Proposed Constructions and Identification of Intrinsic and Extrinsic Supporting Evidence

Set forth below are (1) a table showing the disputed claim terms for the ’641 patent and each party’s proposed constructions of those terms, (2) the Plaintiffs’ evidence in support of their proposed constructions, and (3) the Defendants’ evidence in support of their proposed constructions.

1. Disputed Terms and Proposed Constructions

Disputed Claim Term	Plaintiffs’ Proposal	Defendants’ Proposal
“retailer” (claims 1, 14, 16)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court. In the event that the Court does choose to construe “retailer,” Plaintiffs propose the	distributors, wholesalers, shippers, retailers to the public and to restricted markets or clientele, and any intermediary that is normally part of the series of transactions that results in the transfer of title and possession of a commodity

	<p>following construction:</p> <p>Any intermediary that is normally part of the series of transactions between a supplier and a consumer</p>	from a supplier to a consumer
“supplier” (claims 1, 14, 16)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	manufacturer or wholesaler of consumable goods
“products” (claims 1, 14, 16)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	consumable goods
“third party” (claims 1, 14)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	unrelated to the supplier
<p>“no participation in the transaction” (claim 1);</p> <p>“entirely passive participant in the transaction” (claim 14);</p> <p>“no input into the transaction” (claim 16)</p>	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	no involvement in any aspect of initiating, negotiating, finalizing, or performing on an agreed upon exchange
<p>“consumer” (claims 1, 14);</p> <p>“end product user” (claim 16)</p>	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by	purchaser, buyer, or user of consumable goods

	the Court.	
“address” (claims 1, 14, 16)	zip code or other address information	Defendants contend that this term can be applied according to its plain and ordinary meaning and does not require construction by the Court. In the event that the Court does choose to construe “address,” Defendants propose the following construction: “mailing address”
“geographically closest” (claims 1, 14, 16)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court. In the event that the Court does choose to construe “geographically closest,” Plaintiffs propose the following construction: The nearest region or location to an identified region or location	physically closest
“compensation” (claims 1, 14); “compensated” (claim 16)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	<u>compensation</u> monetary payment of some or all of the profits of the transaction <u>compensated</u> provided monetary payment of some or all of the profits of the transaction
“credits an account” (claims 1, 14); “crediting the designated retailer”	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does	enters/entering an amount representing the calculated monetary compensation

(claim 16)	not require construction by the Court.	
“owned by the selected third party retailer” (claim 1)	Plaintiffs contend that this term should be applied according to its plain and ordinary meaning and does not require construction by the Court.	the selected third party retailer has legal title or possession

2. Plaintiffs’ Evidence in Support of Their Proposed Constructions

a. “retailer” (claims 1, 14, 16)

For the term “retailer” in the ’641 patent claims 1, 14, and 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:1-15
Col. 1:22-40
Col. 1:53-59
Col. 2:7-11
Col. 2:12-18
Col. 2:25-27
Col. 2:29-37
Col. 3:38-45
Col. 4:4-10
Col. 4:25-27
Col. 4:28-31
Col. 5:33-46
Col. 5:49-53
Col. 6:8-13
Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

retail: “The sale of goods or commodities in small quantities directly to consumers.”
American Heritage Dictionary of the English Language 1487 (4th ed. 2000)

retailing: “This embraces those activities concerned with selling goods or services to the final consumer or another person acting on his/her behalf.

Retailing need not take place exclusively in a shop setting. Home shopping via a printed catalog and mail order is a firmly established phenomenon. Less widely available is television-based shopping through a fiber-optic cable, although this continues to grow. The future is likely to see wider use of computer-based shopping “online” with the use of a modem and standard telephone line.”

Blackwell Encyclopedic Dictionary of Marketing 193 (1997)

retailer: “A distributor that sells goods or services to consumers (compare *wholesaler*).”

Oxford Dictionary of Business and Management 507 (4th ed. 2006)

“Aylor is an insurance broker and retailer who helped procure the D & O Liability Policy issued by Zurich. . . . In 1997, Aylor, an insurance retailer, was contacted by Juice Stop Franchising about insurance coverage.”

Nicholls v. Zurich Am. Ins. Group, 244 F. Supp. 2d 1144, 1149 (D. Colo. 2003).

“The Agreement obligated Graham to appoint retail agents (‘retailers’) to market GeoVera insurance policies.”

GeoVera Specialty Ins. Co. v. Graham Rogers, Inc., 636 F.3d 445, 447 (8th Cir. 2011).

b. “supplier” (claims 1, 14, 16)

For the term “supplier” in the ’641 patent claims 1, 14, and 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract

Col. 1:6-15

Col. 1:43-45

Col. 1:54-59

Col. 1:66-2:2

Col. 2:12-18

Col. 2:20-22

Col. 2:47-60

Col. 3:40-45

Col. 4:4-19

Col. 5:20-22

Col. 5:32-39

Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

supplier: “A firm or individual that provides the resources needed by a company and its competitors to produce goods and services.”
Dictionary of Marketing 262 (3d ed. 2003)

supplier: “A party that supplies goods or services. A supplier may be distinguished from a contractor or subcontractor, who commonly adds specialized input to deliverables.”
BusinessDictionary.com, *available at*
<http://www.businessdictionary.com/definition/supplier.html>

supply: “To make available for use; provide.”
American Heritage Dictionary of the English Language 1739 (4th ed. 2000)

“All members of the supposed conspiracy are suppliers of insurance. None competes with the plaintiff, an insurance broker. Accordingly, this case contains no horizontal aspect, but involves only a vertical action undertaken by suppliers, the insurance company defendants, against their agent, the insurance broker plaintiff.”
Blackburn v. Crum & Forster, 611 F.2d 102, 104 (5th Cir. 1980).

“Fireman’s Fund is one of the leading suppliers of insurance products to the entertainment industry and is unrelated to Segal.”
United States v. Segal, 432 F.3d 767, 769 n.1 (7th Cir. 2005).

c. “products” (claims 1, 14, 16)

For the term “products” in the ’641 patent claims 1, 14, and 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Col. 1:6-15

Col. 1:20-23
Col. 1:25-31
Col. 1:33-40
Col. 1:42-45
Col. 1:53-59
Col. 2:25-29
Col. 2:32-34
Col. 2:52-54
Col. 3:66-4:3
Col. 4:25-31
Col. 4:54-60
Col. 4:63-65
Col. 5:6-10
Col. 6:2-4
Col. 6:20-24
Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

product: “A product can be an idea, a service, a good, or a combination of these. For Kotler (1984), a product “is anything that can be offered to market for attention, acquisition, use or consumption that might satisfy a want or need.” Obviously, the products of manufacturing firms are tangible, while those of service industries are intangible. A household insurance package is an example of a product that is a service. Such examples indicate the difficulty of clearly distinguishing between a product and a service (see Service Product). The product is regarded as encompassing a set of benefits and is often referred to as the product (or service) offering.”
Blackwell Encyclopedic Dictionary of Marketing 164-65 (1997)

product: “Offering capable of satisfying a need or a want, that is offered to a target market for attention, acquisition, use, or consumption. A product can be an object, service, activity, person, place, organization, or idea.”
Dictionary of Marketing Terms 447 (3d ed. 2000)

product: “Anything that can be offered to a market for attention, acquisition, use, or consumption that might satisfy a need. It includes physical objects and services.”
Oxford Dictionary of Business and Management 416 (4th ed. 2006)

product: “A good, idea, method, information, object or service that is the end result of a process and serves as a need or want satisfier. It is usually a bundle of tangible and intangible attributes (benefits, features, functions, uses) that a seller offers to a buyer for purchase.” BusinessDictionary.com, *available at* <http://www.businessdictionary.com/definition/product.html>

product: “Something marketed or sold as a commodity.” MerriamWebster.com, *available at* <http://www.merriam-webster.com/dictionary/retailer>

good: “A commodity or service that is regarded by economists as satisfying a human need.” *Oxford Dictionary of Business and Management* 246 (4th ed. 2006)

“An insurance policy is a product, and a policy with a \$ 25,000 limit is a different product from one with a \$ 1 million limit, just as a wheelchair is a different product from an armchair.”
Doe v. Mut. of Omaha Ins. Co., 179 F.3d 557, 560 (7th Cir. 1999)

“At its core, insurance is a product designed to manage risk.”
Am. Nat'l Prop. & Cas. Co. v. Checketts, No. 2:11-CV-250 BSJ, 2012 U.S. Dist. LEXIS 70832, at *21-22 (D. Ut. May 21, 2012) (quoting *Iverson v. State Farm Mut. Ins. Co.*, 256 P.3d 222, 227 (Ut. 2011)).

“State Farm Affordable Health Insurance Products,” *available at* <http://www.statefarm.com/insurance/health/healthprod.asp>

“How Do I Choose an Insurance Product?,” *available at* <http://www.nationwide.com/life-insurance-choice.jsp>

“Products,” *available at* <http://www.amfam.com/products/default.asp>

“Life Insurance Product Comparison,” *available at* <http://www.libertymutual.com/life-insurance/life-insurance-products/life-insurance-product-comparison>

“Business Insurance Products,” *available at* <http://www.safeco.com/business/business-insurance/business-insurance-products>

d. “third party” (claims 1, 14)

For the term “third party” in the ’641 patent claims 1 and 14, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:16-52
Col. 2:3-6
Col. 2:7-11
Col. 2:12-21
Col. 2:29-32
Col. 2:32-37
Col. 2:41-46
Col. 3:37-45
Col. 4:4-17
Col. 4:25-27
Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

third party: “One other than the principals involved in a transaction.”
American Heritage Dictionary of the English Language 1798 (4th ed. 2000)

e. “no participation in the transaction” (claim 1); “entirely passive participant in the transaction” (claim 14); “no input into the transaction” (claim 16)

For the term “no participation in the transaction” in the ’641 patent claim 1, the term “entirely passive participant in the transaction” in the ’641 patent claim 14, and the term, “no input into the transaction” in the ’641 patent claim 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 3:38-45
Claim 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

- participate*: “Take part.”
The New Oxford American Dictionary 1246 (2001)
- passive*: “Existing, conducted, or experienced without active or concerted effort.”
American Heritage Dictionary of the English Language 1285 (4th ed. 2000)
- input*: “Contribution of information or a comment or viewpoint; in general discourse input is now widely used to refer to the transmission of information and opinion.”
American Heritage Dictionary of the English Language 904-905 (4th ed. 2000)
- transaction*: “An instance of buying or selling something.”
The New Oxford American Dictionary 1796-1797 (2001)
- transaction*: “Something transacted, especially a business agreement or exchange.”
American Heritage Dictionary of the English Language 1831 (4th ed. 2000)

f. “consumer” (claims 1, 14); “end product user” (claim 16)

For the term “consumer” in the ’641 patent claims 1 and 14 and the term “end product user” in the ’641 patent claim 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:10-21
Col. 1:49-52
Col. 1:53-59
Col. 2:7-11
Col. 2:12-18
Col. 3:21-35
Col. 3:36-38
Col. 3:47-51
Col. 4:25-37

Col. 4:41-44

Col. 5:34-38

Col. 5:48-52

Col. 6:2-4

Col. 6:23-28

Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

consumer: “A person who purchases goods and services for personal use.”
The New Oxford American Dictionary 369 (2001)

consumer: “One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.”
American Heritage Dictionary of the English Language 395 (4th ed. 2000)

consumer: “1. A purchaser of a good or service in retail.”
“2. An end user, and not necessarily a purchaser, in the distribution chain of a good or service.”
BusinessDictionary.com, *available at*
<http://www.businessdictionary.com/definition/consumer.html>

end user: “The person who actually uses a particular product.”
The New Oxford American Dictionary 563 (2001)

consumer: “A person or company which buys and uses goods and services.”
Dictionary of Marketing 262 (3d ed. 2003)

consumer: “Ultimate user of a product or service.”
Dictionary of Marketing Terms 129 (3d ed. 2000)

“In this case, defendant does not appear to be situated to benefit financially or commercially from the existence of this web site, which appears to be solely intended to capture the attention of insurance consumers to share defendant's commercial commentary and criticism.”

Northland Ins. Cos. v. Blaylock, 115 F. Supp. 2d 1108, 1120 (D. Minn. 2000).

“Courts seek to determine not what the insurer intended by its policy language, but what an ordinary reader and typical insurance consumer would understand the language to mean.”

Lifespan/Physicians Prof'l Servs. Org. v. Combined Ins. Co. of Am., 345 F. Supp. 2d 214, 222 (D.R.I. 2004).

g. “address” (claims 1, 14, 16)

For the term “address” in the ’641 patent claims 1, 14, and 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 1
Figure 2
Figure 3
Col. 2:27-37
Col. 4:1-10
Col. 5:20-32
Col. 5:38-42
Col. 6:6-13
Claims 1, 12, 14, 16

Plaintiffs also identify the following extrinsic evidence:

address: “The particulars of the place where someone lives or an organization is situated.”
The New Oxford American Dictionary 18 (2001)

h. “geographically closest” (claims 1, 14, 16)

For the term “geographically closest” in the ’641 patent claims 1, 14, and 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 1
Figure 2
Figure 3
Col. 2:27-37
Col. 4:1-10
Col. 5:20-32

Col. 5:38-42
Col. 6:11-13
Claims 1, 12, 14, 16

Plaintiffs also identify the following extrinsic evidence:

geographic: “Belonging to or characteristic of a particular region.”
MerriamWebster.com, *available at*
<http://www.merriam-webster.com/dictionary/geographical>

close: “Being near in space or time.”
American Heritage Dictionary of the English Language 350 (4th ed. 2000)

i. “compensation” (claims 1, 14); “compensated” (claim 16)

For the term “compensation” in the ’641 patent claims 1 and 14 and the term “compensated” in the ’641 patent claim 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 1 (payment PC 42)
Figure 2
Col. 1:53-59
Col. 2:3-6
Col. 2:7-11
Col. 2:12-46
Col. 2:47-64
Col. 4:4-1
Col. 5:1-3
Col. 5:32-53
Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

compensation: “The act of compensation or the state of being compensated; something, such as money, given or received as payment or reparation, as for a service or loss.”

American Heritage Dictionary of the English Language, pp. 376-377
(4th ed. 2000)

compensate: “To make satisfactory payment or reparation to; recompense or reimburse.”

American Heritage Dictionary of the English Language 376-377
(4th ed. 2000)

j. “credits an account” (claims 1, 14); “crediting the designated retailer” (claim 16)

For the term “credits an account” in the ’641 patent claims 1 and 14 and the term “crediting the designated retailer” in the ’641 patent claim 16, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 2
Col. 2:12-46
Col. 2:47-64
Col. 4:4-19
Col. 5:32-53
Claims 1, 14, 16

Plaintiffs also identify the following extrinsic evidence:

credit: “Enter as a credit; to make a credit entry in: *credit an account*.”
American Heritage Dictionary of the English Language 428 (4th ed. 2000)

credit: “A balance in a person’s favor in an account.”
MerriamWebster.com, *available at*
<http://www.merriam-webster.com/dictionary/credit>

account: “A formal business arrangement providing for regular dealings or services (as banking, advertising, or store credit) and involving the establishment and maintenance of an account.”
MerriamWebster.com, *available at*
<http://www.merriam-webster.com/dictionary/account>

k. “owned by the selected third party retailer” (claim 1)

For the term “owned by the selected third party retailer” in the ’641 patent claim 1, Plaintiffs identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 4:13-19
Col. 5:1-3
Col. 5:44-46
Claim 1

Plaintiffs also identify the following extrinsic evidence:

own: “To have or hold as one’s own; possess.”
Dictionary.com, *available at*
<http://dictionary.reference.com/browse/own>

select: “To take as a choice from among several; pick out.”
American Heritage Dictionary of the English Language 1578 (4th ed. 2000)

3. Defendants’ Evidence in Support of Their Proposed Constructions

a. “retailer” (claims 1, 14, 16)

For the term “retailer” in the ’641 patent claims 1, 14, and 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:11-15
Col. 1:26-40
Col. 1:42-48
Col. 1:49-52
Col. 2:7-11
Col. 2:12-18
Col. 2:29-37
Col. 3:38-45
Col. 4:4-10

Col. 4:25-27
Col. 4:28-31
Col. 4:60-63
Claims 1, 14, 16

The Defendants also identify the following extrinsic evidence:

retail: “The sale of goods or commodities in small quantities directly to consumers.”
American Heritage Dictionary of the English Language 1487 (4th ed. 2000)

b. “supplier” (claims 1, 14, 16)

For the term “supplier” in the ’641 patent claims 1, 14, and 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Col. 1:9-15
Col. 1:43-45
Col. 1:54-59
Col. 1:66-2:2
Col. 2:12-18
Col. 3:40-45
Col. 4:4-19
Claims 1, 14, 16
Office Action mailed April 9, 2002
Interview Summary of August 2, 2002 interview
Response to Office Action mailed August 8, 2002

c. “products” (claims 1, 14, 16)

For the term “products” in the ’641 patent claims 1, 14, and 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Col. 1:5-15

Col. 1:16-24

Col. 1:25-41

Col. 1:43-52

Col. 2:14-16

Col. 2:51-54

Col. 3:36-45

Col. 4:25-31

Col. 5:24-32

Claims 1, 14, 16

Office Action mailed April 9, 2002

Interview Summary of August 2, 2002 interview

Response to Office Action mailed August 8, 2002, at pp. 2-4, 6, 8-9, 14, 16, and 18

The Defendants also identify the following extrinsic evidence:

product: “Something produced by human or mechanical effort or by a natural process”
American Heritage Dictionary of the English Language 1399 (4th ed. 2000)

d. “third party” (claims 1, 14)

For the term “third party” in the ’641 patent claims 1 and 14, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:16-52

Col. 2:3-6

Col. 2:7-11

Col. 2:12-21

Col. 2:29-32

Col. 2:32-37

Col. 3:37-45

Col. 4:4-17

Col. 4:25-27

Claims 1, 14, 16

Office Action mailed April 9, 2002

Interview Summary of August 2, 2002 interview

Response to Office Action mailed August 8, 2002

The Defendants also identify the following extrinsic evidence:

third party: “One other than the principals involved in a transaction.”
American Heritage Dictionary of the English Language 1798 (4th ed. 2000)

- e. **“no participation in the transaction” (claim 1); “entirely passive participant in the transaction” (claim 14); “no input into the transaction” (claim 16)**

For the term “no participation in the transaction” in the ’641 patent claim 1, the term “entirely passive participant in the transaction” in the ’641 patent claim 14, and the term, “no input into the transaction” in the ’641 patent claim 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 3:38-45

Claim 1, 14, 16

Response to Office Action mailed August 8, 2002, at pp. 2-4, 6, 8-9, 14, 16, and 18

Interview Summary of August 2, 2002 interview

Notice of Allowability, Sep. 17, 2002, at p. 3

U.S. Patent No. 4,797,818 (Cotter) – Abstract, Col. 1:10-43, Col. 4:56-68, Col. 5:1-12, claims 1, 2, and 6.

U.S. Patent No. 6,336,100 (Yamada) – Abstract, Figures 1, 2, and 3, Col. 1:22-31, Col. 2:34-49, Col. 3:6-12, Col. 3:13-31, Col. 4:23-59, Col. 5:7-29, claims 1, 2, and 9-12.

U.S. Patent No. 5,970,472 (Allsop) – Abstract, Figures 8 and 9, Col. 1:15-33, Col. 3:31-36, Col. 7:24-40, Col. 8:32-65, Col. 9:34-67, Col. 10:1-15.

The Defendants also identify the following extrinsic evidence:

transaction: “1. The act of transacting or the fact of being transaction. 2. Something transacted, especially a business agreement or exchange.”
American Heritage Dictionary of the English Language 1831 (4th ed. 2000)

transaction: “1. The act or an instance of conducting business or other dealings. 2. Something performed or carried out. 3. Any activity involving two or more persons.”
Black’s Law Dictionary 1503 (7th ed. 1999)

f. “consumer” (claims 1, 14); “end product user” (claim 16)

For the term “consumer” in the ’641 patent claims 1 and 14 and the term “end product user” in the ’641 patent claim 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 1:16-21
Col. 1:49-52
Col. 1:53-59
Col. 2:7-11
Col. 2:12-18
Col. 3:36-38
Claims 1, 14, 16

The Defendants also identify the following extrinsic evidence:

consumer: “One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.”
American Heritage Dictionary of the English Language 395 (4th ed. 2000)

g. “address” (claims 1, 14, 16)

For the term “address” in the ’641 patent claims 1, 14, and 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 1
Figure 2
Figure 3

Col. 2:27-37
Col. 4:1-10
Col. 5:20-32
Col. 5:38-42
Col. 6:11-13
Claims 1, 12, 14, 16
Office Action mailed April 9, 2002
Interview Summary of August 2, 2002 interview
Response to Office Action mailed August 8, 2002

The Defendants also identify the following extrinsic evidence:

address: “A description of a location of a person or organization, as written or printed on mail as directions for delivery.”
American Heritage Dictionary of the English Language 20 (4th ed. 2000)

h. “geographically closest” (claims 1, 14, 16)

For the term “geographically closest” in the ’641 patent claims 1, 14, and 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 1
Figure 2
Figure 3
Col. 2:27-37
Col. 4:1-10
Col. 5:20-32
Col. 5:38-42
Col. 6:11-13
Claims 1, 12, 14, 16
Office Action mailed April 9, 2002
Interview Summary of August 2, 2002 interview
Response to Office Action mailed August 8, 2002

The Defendants also identify the following extrinsic evidence:

close: “Being near in space or time.”

American Heritage Dictionary of the English Language 350 (4th ed. 2000)

i. “compensation” (claims 1, 14); “compensated” (claim 16)

For the term “compensation” in the ’641 patent claims 1 and 14 and the term “compensated” in the ’641 patent claim 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract

Figure 1 (payment PC 42)

Figure 2

Col. 1:53-59

Col. 2:3-6

Col. 2:7-11

Col. 2:12-46

Col. 2:47-64

Col. 4:4-1

Col. 5:1-3

Col. 5:32-53

Claims 1, 14, 16

Response to Office Action mailed August 8, 2002, at pp. 8-10

The Defendants also identify the following extrinsic evidence:

compensation: “Something, such as money, given or received as payment or reparation, as for a service or loss.”

American Heritage Dictionary of the English Language 376 (4th ed. 2000)

compensate: “To make satisfactory payment or reparation to; recompense or reimburse.”

American Heritage Dictionary of the English Language 376 (4th ed. 2000)

j. “credits an account” (claims 1, 14); “crediting the designated retailer” (claim 16)

For the term “credits an account” in the ’641 patent claims 1 and 14 and the term

“crediting the designated retailer” in the ’641 patent claim 16, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Abstract
Figure 2
Col. 2:12-46
Col. 2:47-64
Col. 4:4-19
Col. 5:32-53
Claims 1, 14, 16
Response to Office Action mailed August 8, 2002, at pp. 8-9

The Defendants also identify the following extrinsic evidence:

credit: “To make a credit entry in: *credit an account*.”
American Heritage Dictionary of the English Language 428 (4th ed. 2000)

k. “owned by the selected third party retailer” (claim 1)

For the term “owned by the selected third party retailer” in the ’641 patent claim 1, the Defendants identify the intrinsic record, including the specification, claims, file history, and considered references in the ’641 patent, especially the following:

Col. 4:13-19
Col. 5:1-3
Col. 5:44-46
Claim 1

The Defendants also identify the following extrinsic evidence:

own: “To have or possess as property”
American Heritage Dictionary of the English Language 1258 (4th ed. 2000)

C. Witnesses at Claim Construction Hearing

Neither party intends to call witnesses at the claim construction hearing.

Dated: August 16, 2012

Respectfully submitted,

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